

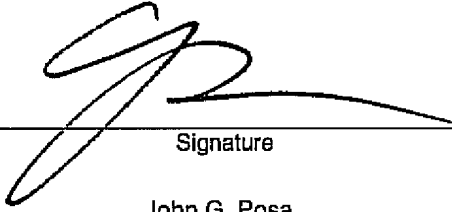
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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) AUT-10002/36 | |
|---|---|--|--|
| | Application Number 09/826,786-Conf. #4084 | Filed April 5, 2001 | |
| | First Named Inventor Jean Patrick Montoya | | |
| | Art Unit 3623 | Examiner J. Loftis | |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,424</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> _____ Signature John G. Posa _____ Typed or printed name (734) 913-9300 _____ Telephone number July 11, 2008 _____ Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p> | | | |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Montoya

Serial No.: 09/826,786

Group No.: 3623

Filed: April 5, 2001

Examiner: J. Loftis

For: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY
DATA OVER THE INTERNET

APPELLANT'S PRE-APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed April 11, 2008, Applicant elects to initiate a new appeal under 37 CFR §41.31. Applicant hereby submits a Notice of Appeal accompanied by a Pre-Appeal Request for Review. Pre-Appeal Brief arguments are below for the consideration of the review panel.

Claims 1-3, 5, 9, 10, 15 and 16 stand rejected under 35 USC §102(e) over West et al., U.S. Patent No. 6,175,833. However, it is Appellant's belief that the passages cited in support of the rejection do not disclose the subject matter expressed by the Examiner or the limitations of Appellant's claims. The purpose of this pre-appeal brief is to point this out. Although Appellant focuses on the limitations of claim 1, the passages cited by the Examiner with respect to the dependent claims are equally unavailing.

With regard to claim 1, the Examiner states that the limitation of Appellant's step of "establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response" is met by West at Column 3, lines 38-63 and Column 4, Lines 16-27, but it is not. Column 3, lines 38-63 of West is reproduced below as follows:

"A computer network system, particularly one on the scale of the Internet, has many host network servers connected to serve data to many clients over a network. FIG. 1 shows a simple computer network system 20 representative of the familiar, large-

scale Internet environment. The system 20 has a client computer 22 resident at a user's premises. Although illustrated as a desktop PC, the client computer 22 is representative of many different types of computing devices, including portable computers, hand held computers, pagers, Web-phones, set-top boxes for TVs, and so forth.

The client computer 22 connects to the Internet 24 via a modem, network card, or other type of interface. The client computer 22 runs a Web browser application (not shown) to access content provided on the World Wide Web. The Web content is maintained at a variety of Web sites, as represented by Web site 26.

The Web site 26 has one or more server computers, collectively referred to as server 28. The server computers may be implemented in various ways, including Unix-based sever computers or PC-based computers that run the Microsoft Windows NT Server operating system. The server 28 runs a Web server software program 30 that accepts requests from the client-based Web browser, accesses a file system 32 containing pre-stored content in the form of Web pages 34, and returns the requested page(s) to the client 22.

Column 4, Lines 16-27 of West read as follows:

“Of particular interest in this system 20 is a technique for conducting live online votes. In this illustration, the server 28 is shown running a software-based survey authoring tool 36 that allows an editor to construct online surveys. It is noted that the authoring tool may be alternatively (and preferably in some cases) run on a separate editor's computer, with the survey information being written into the database. In one implementation, the authoring tool 36 is an application program written in Visual Basic that facilitates entry of one or more questions, and the multiple choice answers that may be selected in response to the questions.”

As can be seen, these disclosures have nothing whatsoever to do with establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response. The Examiner's argument that “inherently the system contains voting results for all surveys” (latest OA, middle of page 4) does not follow from the passage cited.

The Examiner argues that Appellant's limitation of “providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client” is also met by Column 9, Lines 19-36 of West, reproduced below, but this is not the case.

“Now, suppose the reader returns to the page with the survey. In response to the user's action, the Web browser submits a request for the page to the Web server 30. The Web server 30 receives the request (step 150). Since this request is not the first one for this page (i.e., the "yes" branch from step 156) and since the user has already voted for the survey (i.e., the "no" branch from step 168), the Web server 30 retrieves the Web page 34 (i.e., the ASP file) containing the story from the file system 32 (step 178 in FIG.6). The Web server 30 processes the ASP file to form the ultimate Web page presented to the reader.

This time the "include" command indicates that the survey results are to be included with the survey. The Web server retrieves the appropriate survey from the survey index table 40 (step 180 in FIG. 6) and inserts it, along with the totals and percentages, into the Web page (step 182). The Web server downloads the Web page with survey in HTML format to the client computer (step 184 in FIG. 6).”

As can be seen, this portion of West does not touch upon receiving previously collected survey results to the client *only if the survey collector receives a response to the survey questionnaire from the client.*

The Examiner further argues that Appellant's step of “rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client” is also met by the passage above on the grounds that “inherently if the user does not vote, he/she does not gain access to the survey results. There in nothing inherent about the Examiner's comments. The cited reference simply does not disclose this step, explicitly or implicitly.

Finally, the Examiner argues that Appellants limitation that “wherein the composite survey response is unrelated to the survey questionnaire” is met by West at Column 3, lines 38-63 and Column 4, Lines 16-27, which have already been reproduced above. This is simply not the case. Indeed, the Examiner uses the same argument for this limitation as for the limitation of “establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response.” The Examiner's argument is that both limitations are met by “computer network system” and “online voting; inherently the system contains voting results for all surveys.” (OA, top of page 5). “Computer network system” certainly does not anticipate Appellant's claims, and the system of West does not “inherently” contain voting results for all surveys. The reference does not disclose this and there is nothing inherent about it.

Anticipation requires the presence of all elements of a claimed invention as arranged in the

claim. A disclosure that 'almost' meets that standard does not 'anticipate'. Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By:  _____

Date: July 11, 2008

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